

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2005-000926-001 DT

03/23/2006

COMM. EARTHA K. WASHINGTON

CLERK OF THE COURT  
L. Rasmussen  
Deputy

FILED: 03/24/2006

STATE OF ARIZONA

JAMES D NEUGEBAUER

v.

THOMAS V SAVOCA (001)

THOMAS V SAVOCA  
701 W DEER VALLEY RD STE 6  
PHOENIX AZ 85027

REMAND DESK-LCA-CCC  
SCOTTSDALE CITY COURT

**RECORD APPEAL RULE / REMAND**

**Lower Court Case No. PR200524239**

This appeal previously assigned to Judge Margaret H. Downie, was reassigned to Commissioner Eartha K. Washington for determination.

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). The court has considered the record of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

On May 5, 2005, a car registered to Thomas Savoca, the appellant, was photographed at the intersection of Shea Boulevard and 90<sup>th</sup> Street in Scottsdale traveling 12 miles above the posted speed limit. A complaint was filed in the Scottsdale Municipal Court on May 12, 2005, and an arraignment was scheduled on June 15, 2005. On the arraignment date, the appellant failed to appear, and a request for personal service was made on July 14, 2005. The court scheduled another arraignment for August 18, 2005. On August 9, 2005, a process server went to the appellant's residence and served copies of the summons and complaint upon a woman identified by the name of Sally. In his affidavit of service, the process server indicates that Sally identified herself as the wife of the appellant. When the appellant failed to appear for the arraignment, a default judgment was entered against him on August 23, 2005. On September 7, 2005, the court records show that a pre-collection letter was sent to the appellant informing him



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without sufficient excuse neglect to appear and protect their rights, cannot complain of any order of judgment rendered against them.” Scott v. G.A.C. Finance Corporation, 107 Ariz. 304, 306, 486 P.2d 786,788 (1971).

The appellant’s situation is different from the defendant’s in G.A.C. “In *G.A.C. Finance*, our Supreme Court found valid service, even though the summons and complaint were served at a different address because the defendant was personally given the papers well in advance of the entry of default judgment.” Marks v. LaBerge, 146 Ariz. 12, 15, 703 P.2d 559, 562 (1985). In this case, the appellant did not have actual notice of the matter until after he received the pre-collection letter the lower court sent out on September 7, 2005. Appellant immediately acted upon receipt of the letter and tried to remedy the judgment. His excuse that his ex-wife, who happened to be in the residence at the time of service, failed to give him copies of the summons and complaint appears sufficient. The lower court heard the appellant’s explanation and still upheld the judgment against him. Appellant’s motion to set aside should have been granted pursuant to Rule 23 of the Rules of Procedure in Civil Traffic Violation Cases.

IT IS ORDERED setting aside the default judgment entered by the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.